

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-210719

DATE: December 23, 1983

MATTER OF: Army Health Service Command—Advance Payment for Interlaboratory Comparison Survey Program.

DIGEST: Army hospitals subscribe to Interlaboratory Comparison Survey Program to satisfy quality control and accreditation requirements. Program provides subscribers with printed evaluations based upon participant input. Fact that program supplies participants with survey kits so that they can perform tests to obtain "input data" does not "taint" evaluation report so as to preclude payment under 31 U.S.C. § 3324(d)(2), which permits advance payments for "publications," since kits are means for collecting data evaluated in publications and analysis of data is the content of publication.

The Chief of the Finance and Accounting Division, Fort Sam Houston, Texas, requests our decision to resolve an internal staff dispute concerning whether the Army can properly pay in advance for subscriptions to the College of American Pathologists' (CAP) Interlaboratory Comparison Survey and Program. We conclude for the reasons given below that it can.

CAP sells to Army hospitals, on a subscription basis, evaluation reports based upon data supplied by each participating laboratory. The hospitals procure the CAP subscriptions in order to meet requirements established by the Joint Committee on Accreditation of Hospitals (JCAH) and to satisfy quality control standards. However, some Army officials question the propriety of paying in advance for the subscriptions because the program provides subscribers with laboratory kits in addition to the printed material. Participants perform various chemical tests using the kits in order to obtain data required for the evaluation reports. Thus, the question is asked, in effect, whether the inclusion of the laboratory kits "taints" the evaluation reports so as to preclude advance payment under 31 U.S.C. § 3324(d)(2) (formerly 31 U.S.C. § 350).

Section 3324(d) provides:

"The head of an agency may pay in advance from appropriations available for the purpose— * * * (2) charges for a publication printed or recorded in any way for the auditory or visual use of the agency."

This Office has held that items which are read, such as books, pamphlets, newspapers, periodicals, microcards and other prints

123124
027500

constitute publications. See 41 Comp. Gen. 211 (1961); 57 Comp. Gen. 583 (1978). Thus, a subscription to printed evaluation reports themselves would fall within the purview of 31 U.S.C. § 3324(d)(2), supra.

While we do not have an example of the survey kits before us, the Deputy Chief of Staff, Logistics, U.S. Army Health Services Command, describes how the survey kits fit into the publication of the summary evaluations as follows:

"a. Survey kits, consisting of 'unknown' elements and reagents required to test for the 'unknowns' are periodically mailed to participating labs, military and civilian.

"b. Individual labs perform the required test and mail the results to the contractor.

"c. Contractor summarizes and evaluates the results from all participating laboratories.

"d. Contractor periodically mails summary evaluations * * * to participants. The evaluations include all results from all participants, indicating how 'well' individual labs performed in relationship to all other labs. In addition, comparison of alternate methods used by different labs is discussed."

The Deputy Chief of Staff, Logistics, of the Command cites our decision in 41 Comp. Gen. 211 (1961) in support of his position that the subscription to this service may be paid in advance. In that case, we concluded that the Department of Commerce could make an advance payment under 31 U.S.C. § 530 (the predecessor to 31 U.S.C. § 3324(d)(2)) for a complete set of microcards of IGY Radiation Data published by the World Meteorological Organization and based on "data furnished by the countries who are members * * *." According to the Deputy Chief--

"The fact that the evaluated results are based upon input furnished by the participants does not preclude classification of the program as a subscription to a publication."

The Staff Judge Advocate for the Health Services Command views the subscription differently. He believes that the Army is buying two things: a testing service and a publication. He points out that the Government is receiving survey kits and analysis in addition to the summary of the individual computer printed evaluation

reports. In support of his position, the Staff Judge Advocate cites our decision, B-188166, June 3, 1977, where we concluded that the authority to make advance payment for publications did not extend to rental of equipment used in conjunction with a microfilmed library system. While it is not clear from the decision itself, the equipment in B-188166, *id.*, consisted of reader/printers that would give the procuring agency access to the microfilm.

41 Comp. Gen. 211, *supra*, cited by the Logistics Command Deputy Chief of Staff in support of allowing advance payments in this case, did not consider the source of data in deciding that the microcards in issue were a "publication" within the contemplation of the statute. However, the data used in preparing the microcards in that case was, in fact, secured from the publication's users, just as the information analyzed and published by the contractor in this case is obtained from users of the publication by means of the survey kits.

While we assume that the cost of preparing and distributing the survey kits and of analyzing the data obtained is included in the subscription price for the CAP reports, the kits would appear to be nothing more than data-gathering instruments and thus are a part of the publication process. Similarly, analysis of data obtained by use of the survey kits is an obvious prerequisite to publication of the results of the analysis. The reader/printers which were the subject of B-188166, *supra*, on the other hand, were not part of the publication process. Our decision in that case stated that the legislative history of Public Law 93-534, which expanded the definition of "publication" to include "other publications" such as microfilm and tape-recorded material, "does not indicate any intent to authorize advance payments for items of equipment necessary for use in conjunction with the 'other publications.'" (Emphasis added.)

In our view, the two situations are distinguishable on the ground that the data gathered and analyzed by the CAP is not used "in conjunction with" the publication of the CAP reports but instead is an integral part of the publication process. Further, the CAP solicitation material furnished with the Army's request for a decision refers to the various survey reports offered to hospitals and laboratories as "subscriptions" and requires that payment be made in advance.

Accordingly, we conclude that subscriptions to the CAP reports may be paid in advance pursuant to 31 U.S.C. § 3324(d)(2).

for Harry D. Van Cleave
Comptroller General
of the United States